

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS D. PETITE

Appeal No. 2005-1866
Application 08/825,576¹

MAILED

SEP 07 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before HAIRSTON, BARRETT, and LEVY, Administrative Patent Judges.

BARRETT, Administrative Patent Judge

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 26-31.

We affirm-in-part.

¹ Application for patent filed March 31, 1997, entitled "Transmitter for Accessing Automated Financial Transaction Machines," which is based on and claims priority under 35 U.S.C. § 119(e)(1) from U.S. Provisional Application 60/040,316, filed February 14, 1997.

BACKGROUND

The disclosed invention, shown in figures 1 and 2, relates to a remote access device 20 for accessing an automated financial transaction machine (AFTM) 10 and a system for providing cardless access to an AFTM. The remote access device has a single button 22 which, when depressed, causes a controller 46 to retrieve user identification data from memory 42 and transmit it from a low-power transmitter 48. The transmitter also transmits a function code 96 that specifies a function to be performed (figure 4). The disclosed invention may provide multiple functionality through the use of multiple transmit buttons, e.g., one button for initiating AFTM access, another button for activating an automobile lock/alarm system (e.g., 24 in figure 1), and still another button for providing a distress call (specification, p. 17, lines 4-11).

Claim 26 is reproduced below.

26. An automated teller banking system, comprising:
a remote access unit having:

- a first user-depressable [sic, depressible] button;
- a memory configured to store user identification data, including track one and track two data;
- a low-power wireless transmitter;
- a controller configured to control the wireless transmitter to transmit the user identification data stored in the memory in direct response to a manual depression of the first user-depressable [sic] transmit button, without any verification of user identification data;

data formatting logic configured to format the user identification data, the data formatting logic being disposed to receive input from both the controller and the memory and to generate an output for the wireless transmitter;

an automated teller banking machine having:

a receiver configured to receive wireless transmissions from a remote access unit;

a mechanism for reading information from a magnetic strip of a banking card;

data formatting logic disposed to receive an output from both the mechanism for reading information and the receiver; and

logic to verify account information for a user and an account identified by the user identification information; and

a network coupled to the automated teller banking machine for communicating account information, user information, and other information with a remotely-located database.

THE REFERENCES

The examiner relies on the following references:

Waraksa et al. (Waraksa)	5,319,364	June 7, 1994
Tait et al. (Tait)	5,550,358	August 27, 1996
Petite et al. (Petite) ²	5,714,931	February 3, 1998 (filed February 22, 1996)

THE REJECTIONS

Claims 26-28, 30, and 31 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Petite.

² Appellant has not sought to overcome the reference as prior art under 35 U.S.C. § 103(a) in accordance with the examiner's comments in the final rejection, pages 2-3.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tait in view of Waraksa.

We refer to the final rejection (pages referred to as "FR_{__}") and the examiner's answer (pages referred to as "EA_{__}") for a statement of the examiner's rejection, and to the substitute appeal brief (pages referred to as "Br_{__}") and reply brief (pages referred to as "RBr_{__}") for a statement of appellant's arguments thereagainst.

OPINION

Grouping of claims

Appellant argues that the claims within each of the following groups stand or fall together and presents arguments for each group (Br4).

Group I: Claims 26-28
Group II: Claim 29
Group III: Claims 30 and 31

Group I: Claims 26-28

The appellant contends that Petite does not disclose, "data formatting logic disposed to receive an output from both the mechanism for reading information (from a magnetic strip of a banking card) and the receiver (configured to receive wireless information from a remote access unit)" (emphasis added) (Br8-9). Specifically, appellant argues that the examiner "incorrectly creates a nexus between the location of a transceiver and the functionality of other devices at that location" (RBr4). Also,

Appeal No. 2005-1866
Application 08/825,576

appellant contends that Petite does not disclose "any structure for connecting the transceiver of Petite and the ATM" (RBr4).

The examiner states that the emergency transceiver of Petite is located inside the ATM and the "automated teller banking machine (ATM) inherently contains data formatting logic disposed to receive an output from the mechanism for reading information from a magnetic strip of a bank card" (EA4).

We agree with the examiner that the ATM of Petite inherently contains data formatting logic to receive an output from the mechanism for reading information. It was well known in the art that ATMs have a magnetic reader to "read" data from the magnetic strip on a banking card and, therefore, they must inherently also have data formatting logic that receives and processes the data read from the banking card. Additionally, we agree with the examiner that Petite discloses the receiver located within an ATM and that there must inherently be data formatting logic located within an ATM to receive the output from the receiver.

However, although we agree with the examiner that the ATM contains data formatting logic for the reading mechanism and data formatting logic for the receiver, these separate data formatting logics do not meet the limitations of claim 26. Appellant discloses (specification, p. 13, lines 3-13):

[T]he data formatter 52 (shown as a single block) receives signals from both the transducer 54 and the RF receiver 50. It will, however, be appreciated that the data formatting

function of block 52 may be provided by two separate and distinct formatting units.

Claim 26 requires "data formatting logic disposed to receive an output from both the mechanism for reading information and the receiver" (emphasis added) and is directed to the single data formatting logic embodiment. Petite suggests two separate and distinct data formatting logic units, as opposed to a single-unit data formatting logic recited in claim 26. The fact that appellant discloses the single-unit data formatting logic to be equivalent to a two-unit data formatting logic cannot be used as evidence of obviousness because this is appellant's own teaching. Petite discloses a personal security system with a receiver that may be located inside an ATM (col. 2, lines 21-25). Petite does not disclose any connection between the "regular" ATM circuitry and the circuitry for the personalized security system. Additionally, an ATM inherently functions to verify financial account information and conduct financial transactions, whereas the personalized security system of Petite is for emergency situations. Thus, we find that the two systems are distinct units that do not function together and we find no reason to integrate the two systems to share data formatting logic. Accordingly, the rejection of claims 26-28 is reversed.

Group II: Claim 29

The examiner finds that Tait discloses the limitations of claim 29, with the exception of "transmission of a function code along with the user identification data" (FR4). The examiner finds that Waraksa discloses a remote access unit in which a transmitter transmits a function code along with an identification code (FR4). The examiner concludes that "it would have been obvious to one with ordinary skill in the art to include the transmission of a function code along with the identification data transmitted by the remote access unit of Tait et al because the transmission of such data/code was conventional in the art of remote access devices as evidenced by the disclosure of Waraksa et al." (FR4).

The appellant argues Tait and Waraksa do not disclose the claimed function code and there is no motivation to combine Tait and Waraksa (Br11-15). Specifically, appellant argues the function code "defines a function for automatically accessing the automated financial transaction machine" (Br12), whereas in Tait, the system requires assistance or verification "by a vendor or any other party" (Br12). Additionally, appellant argues that the function code of Waraksa is not the same as that recited in claim 29 because the "different function code in Waraksa controls activation of vehicle functions, and does not provide for automatic accessing of an automated financial transaction

Appeal No. 2005-1866
Application 08/825,576

machine" (Br13). The appellant also contends the "Office Action fails to cite an appropriate suggestion, teaching, or motivation to combine the alleged teachings of Tait and Waraksa" (Br13).

The examiner states that the "obviousness of the inclusion of a function code in the signal transmitted by the remote access device of Tait et al (Fig. 5) was affirmed in the Board Decision of March 21, 2002, Paper No 25. See lines 13-19 on page 12 of the Board Decision" (EA4-5). The examiner finds that, in Tait, "the transaction is fully mechanized for the vendor" (EA5).

The contents of Tait are Waraksa are discussed throughout the Board decision of March 21, 2002.

Claim 29 requires transmitting and receiving a function code "wherein the function code defines a function for automatically accessing the automated financial transaction machine." Tait discloses a remote wireless transaction system that has a hand-held transmitter (abstract). The system transmits a user's identification data from the hand-held device to a receiver to initiate the transaction (col. 4, lines 32-37, 49-59). In the embodiment of Fig. 5, Tait discloses the data is sent without the user entering a personal identification number (PIN) for verification (col. 6, lines 48-50).

However, Tait does not disclose transmitting a function code along with the identification data. Appellant describes that the

remote access device may have a separate transmit button for each function (specification, p. 17, lines 4-13):

[T]he invention may provide multiple functionality through utilization of multiple transmit buttons. One button may be for initiating AFTM [sic, AFTM] access, while another button may be for activating an automobile lock/alarm system. Still a further button could be provided in connection with a distress feature. That is, the button could cause the transmitter to transmit a sequence of bits that indicate a distress call.

The specification does not disclose different functions of an AFTM machine, but only the capability of performing different functions, one of which involves initiating AFTM access.

Claim 29 is limited to a "single user-depressable [sic] button."

Tait discloses an embodiment with multiple buttons or a single user-depressible buttons, and the button is used to transmit user data for access to financial transaction machines and for other purposes, such as paying parking charges, paying tolls, etc. Tait discloses use of the remote transmitter in place of swiping a credit card or bank card to eliminate the problems with contact. Waraksa discloses a remote access device that uses a 4-bit function code attached to a 20-bit identification code (col. 5, lines 63-66). Waraksa states that the 4-bit function code provides up to sixteen different function codes to "selectively control the activation of additional functions as desired" (col. 5, line 66, to col. 6, line 1).

Tait does not disclose transmitting a function code along with the identification data. Appellant does not describe what

function code is needed by an AFTM machine in addition to identification data that would be provided by swiping the card or transmitting the data as in Tait. Nevertheless, Tait discloses that "the transmitter 10, when actuated, transmits information about the user which is received by the receiver 12 and used to initiate the transaction" (col. 4, lines 35-37). We conclude that one of ordinary skill in the art would have appreciated that Tait must transmit whatever information is necessary to access an AFTM machine, and that would have been motivated to include a function code, if such was needed, in view of Waraksa. Accordingly, we sustain the rejection of claim 29.

Group III: Claims 30 and 31

Appellant argues that Petite does not disclose: (1) a low-power wireless transmitter; and (2) data formatting logic as claimed (Br15).

Low-power wireless transmitter

Appellant argues that Petite does not disclose a low-power transmitter because the transmitter in Petite transmits a signal that reaches a minimum of 150 feet away (Br15). In contrast, appellant contends, the present "transmitter 20 is an extremely low power transmitter, so that a user will have to be in close proximity, (e.g., several feet) to the receiver 18 of an AFTM 10

in order to use the transmitter" (specification, p. 10, lines 13-15, cited at Br16).

The examiner states (EA3):

The specification lacks a standard for determining/measuring the degree of power intended (low) in the claims. Low is a relative term and the use of the terminology "low-power transmitter" in claims 29 and 30 does not distinguish the claimed transmitter over the wireless transmitter of Petite et al.

The appellant responds by arguing that the "Applicant's specification and Petite both utilize transmission distance as a standard for determining the degree of transmitter power" (RBr2).

The appellant's specification states that the user must be in "close proximity" to the receiver for the transmitted signal to reach the receiver, and gives an example of "several feet" (specification, p. 10, lines 11-15). The specification also states that the reason for using an extremely low-power transmitter is to "prevent the unlawful interception of the electromagnetic signals." Id. However, we find that the appellant's description does not clearly define what transmission distance classifies a transmitter as either low- or high-power. Therefore, we agree with the examiner, and interpret the term "low-power," used to describe the wireless transmitter, to be a relative term because the specification does not provide an adequate definition of or standard for low-power. Claim 29 does not define "low-power" in terms of distance.

In Petite, the transmitter sends a signal to a "nearby transceiver" (col. 2, lines 3-4), and the transceiver is located "a distance in close proximity to where the user activates the portable transmitter device 120, preferably within 150 feet" (col. 5, lines 28-30). Since the appellant's specification provides no standard for determining low power, we find that Petite discloses a low-power transmitter because the transmission area is limited to receivers that are "nearby" or "in close proximity to" the receiver.

Data formatting and verification logic

The data formatting logic in claim 30 is:

data formatting logic configured to format a message for transmission from the wireless transmitter to an automated financial transaction machine, the data formatting logic configured to format a message comprising a concatenation of the user identification data and a function code, wherein a unique function code is associated with each distinct user-depressible button and the automated financial transaction machine includes logic to verify account information for a user and an account identified by the user identification information.

This paragraph includes two separate limitations: (1) data formatting logic in the remote access unit; and (2) verification logic in the automated financial transaction machine.

As to the data formatting logic, the examiner states that "[t]he plurality of buttons are provided on the remote access unit [of Petite] and are associated with different functions" (FR3) and concludes that "[s]ince the plural buttons on the

remote access unit are associated with different functions it would have been obvious to one with ordinary skill in the art to transmit a function code along with the user identification data transmitted upon the depression of a selected button" (FR3).

See also EA5 ("Transmitting a specific function code along with the user identification data upon the depression of each user-depressible button would have been obvious to one with ordinary skill in the art so that specific function(s) could be performed (police assistance, medical assistance, fire or automobile trouble)").

Appellant argues that "Petite does not disclose a remote access unit that formats a message for transmission from the transmitter to an automated financial transaction machine that verifies account information for a user of the remote access unit and an account identified by the user identification information transmitted by the remote access unit" (Br17).

Appellant does not say what the error is in the examiner's rejection. Initially, we interpret claim 30 to not require the message to be financial information. The recitation of transmitting "to an automated financial transaction machine" is broad enough to read on transmitting a message to a circuit located within an ATM, where the circuit is completely separate from the circuitry required to perform financial transactions inherent to ATMs. Petite discloses an embodiment where a user

may transmit a particular emergency type condition using a different button for each emergency type (col. 3, lines 24-38). Thus, each button transmits a function code corresponding to the emergency type. When the user activates the transmitter (by pressing one of the top buttons), the transmitter transmits, using FSK tone modulation, a signal containing a user identification code (col. 3, lines 46-48) and the type of emergency condition (col. 3, lines 34-38). Because the transmitter transmits using FSK tone modulation, we find this implies that the device of Petite inherently contains data formatting logic to format the data to an FSK tone modulation signal. The user's identification code corresponds to the identification data and the emergency type data corresponds to the function code. Therefore, Petite discloses data formatting logic that formats a message comprising a concatenation of user identification data and a function code.

As to the verification logic in the automated financial transaction machine, claim 30 recites, "the automated financial transaction machine includes logic to verify account information for a user and an account identified by the user identification information." We interpret this claim language as broad enough to read on logic located within an ATM, but that functions separately from the financial transaction circuitry inherent to ATMs. Additionally, we interpret that this claim language does

not require that the account information be financial account information. Petite discloses a personalized security system, where receiver and decoder circuitry are located inside an ATM (col. 2, lines 21-25). A hand-held portable transmitter transmits a signal containing two or more data elements that are specific to the user (col. 3, lines 64-66). Petite discloses the data elements sent to the receiver are the user's identification code, name, address, and additional user identification information (cols. 3-4, lines 66-67 and 1-4, respectively). The user identification code is then "verified against the user identification codes stored in the CPU 330" (col. 4, lines 51-53). We find that the identification code of Petite is a portion of a user's account information that is used to identify and verify a particular user and relate the user to a particular type of emergency. Accordingly, we find that Petite discloses logic to verify account information for a user and an account identified by the user identification information.

In addition, the examiner interprets claim 30 as "directed to a remote access unit (see preamble), the details concerning the automated financial transaction machine do not add patentable weight to or distinguish the claimed remote access unit from the remote access unite of Petite et al." (EA5-6). That is, claim 30 is directed to the remote access unit, not the combination with the automated financial transaction machine. Appellant does not

Appeal No. 2005-1866
Application 08/825,576

address this interpretation in his reply brief and has not shown the error in the examiner's position that circuitry in the AFTM should not be given patentable weight.

Therefore, since we find that Petite discloses a low-power transmitter, data formatting logic, and verification logic (if this is, in fact, required by claim 30), we affirm the examiner's rejection of claims 30 and 31 under 35 U.S.C. § 103(a) as being unpatentable over Petite.

CONCLUSION

The rejection of claims 26-28 is reversed

The rejections of claim 29-31 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). See 37 CFR § 1.136(a)(1)(iv) (2004).

AFFIRMED-IN-PART


KENNETH W. HAIRSTON
Administrative Patent Judge


LEE E. BARRETT
Administrative Patent Judge

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STUART S. LEVY
Administrative Patent Judge

Appeal No. 2005-1866
Application 08/825,576

DANIEL R. McCLURE
THOMAS KAYDEN HORSTEMEYER & RISLEY
100 GALLERIA PARKWAY N W #1500
ATLANTA, GA 30339-5948